

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RODNEY McMORRIS	§	
v.	§	CIVIL ACTION NO. 6:07cv444
		(Crim. No. 6:04cr74)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Rodney McMorris, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

McMorris was convicted on his plea of guilty of conspiracy to possess with intent to distribute and distribution of over 50 grams of cocaine base, receiving a 226 month sentence. He sought an appeal of his conviction, and appointed counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1968), certifying that there were no non-frivolous grounds upon which to appeal. On September 14, 2006, the Fifth Circuit agreed and dismissed the appeal as frivolous.

In his Section 2255 motion, McMorris asserts that he received ineffective assistance from his attorney, Robert Wilson. The Magistrate Judge ordered the Government to answer, and McMorris filed a response to the answer. The Magistrate Judge also reviewed the transcripts of the change of plea hearing and the sentencing proceeding.

After review of the pleadings and records, the Magistrate Judge issued a Report recommending that McMorris' Section 2255 motion be denied and that McMorris be denied a certificate of appealability *sua sponte*. McMorris received a copy of the Magistrate Judge's Report on May 20, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by

the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly


ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence is hereby DISMISSED with prejudice. It is further

ORDERED that the Movant Rodney McMorris is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 15th day of August, 2008.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE